

VIRGINIA DEPARTMENT OF HEALTH
DIVISION OF CHRONIC DISEASE PREVENTION/NUTRITION
Policy and Procedure

Number: 15.0
Effective Date: May 17, 2000

SANCTIONS/COMPLIANCE

Sanction Classification System

A. SCOPE

It is very important that Retailers and their employees understand and follow the rules and regulations governing the Virginia Special Supplemental Food Program, for Women, Infants, and Children (WIC). Only with cooperation can the State Agency's WIC Program assure nutritional benefits to the greatest possible number of women, infants and children. Violations of the regulations are in direct opposition to the goals of the WIC Program and may result in the Retailer's being fined, assessed a Civil Money Penalty (CMP), *disqualified and losing its FOOD STAMP authorization as well.*

The Commonwealth of Virginia has an Investigative Compliance Service whose primary purpose is to identify WIC Program abuse and to investigate fraud. The primary method of investigating abuse is through compliance buys. A buy is an investigation "involving an undercover visit in which an individual poses as a WIC participant and purchases foods in order to determine the Retailer's compliance or non-compliance with WIC Program regulations." The Retailer is intentionally not informed at any time during the visits. The buy identifies specific areas which indicate a need for change in the Retailer's business practice to prevent program errors, abuse and to confirm possible involvement of unauthorized Retailers. The buy will be used to validate and document the occurrence of violations, and to monitor Retailer performance with Program rules and requirements.

Compliance buys may be conducted randomly or on those Retailers suspected of violating Contract requirements and Federal Regulations. An investigation may consist of up to five (5) compliance buys. If a violation is observed during the first or second buy(s), a minimum of three (3) buys or a maximum of five (5) buys will be conducted, as needed. One documented violation may result in a money penalty (fine). The Retailer will be subject to sanctions for all program errors and/or abuse uncovered after the investigation closes.

To promote and strengthen program integrity, WIC/FSP will implement reciprocal Retailer disqualifications effective May 17, 2000. The WIC Program will reciprocally disqualify any Retailer who has been disqualified from Food Stamp Program (FSP) under the WIC/Food Stamp Program Vendor Disqualification Final Rule. The WIC disqualification is for the same length of time as the FSP disqualification and can begin at a later date than the FSP disqualification. **A FSP disqualification, which results in a disqualification from WIC, is not subject to an Administrative Appeal Hearing** (a separate administrative review) under the WIC Program. In order for the FSP to take reciprocal disqualification action in response to a WIC disqualification, the WIC disqualification must be based on one (1) of the WIC Mandatory Federal Sanctions. If a pattern is required, more than one (1) incident of the violation must be documented. The Retailer must receive notice that the WIC disqualification may result in a FSP reciprocal disqualification

without the opportunity for a separate administrative or judicial review under the Food Stamp Program. This notification was sent January 6, 2000 to all authorized Retailers.

The State Agency's WIC Program must disqualify a Retailer for these violations, unless the State Agency's WIC Program determines that such disqualification would result in inadequate participant access. A Civil Money Penalty (CMP) may be offered in lieu of disqualification when inadequate participant access (as determined by the State Agency's WIC Program) would otherwise occur. The CMP is intended to be used in situations in which the disqualification of a Retailer would cause a **hardship, not just an inconvenience** to participants (see Inadequate Participant Access Policy). A CMP payment does not relieve the Retailer of financial liability for previous compliance issues such as outstanding overcharge payments or overdue due to the sale of unauthorized foods. These outstanding liabilities must be paid, in addition to the CMP. **The Retailer will be required to submit a written Corrective Action Plan (Letter of Intent) with implementation dates to prevent future occurrences of violations.**

Penalty points are assessed for all violations documented during a routine/compliance visit. The State Agency's WIC Program will maintain records of penalty points, CMPs and Technical Fines (Class A) assessed against each Retailer. Any program violations that have been eliminated, under this sanction classification system, will not be converted into the Retailer's compliance history. For instance, if a Retailer was previously sanctioned for *"fails to verify the signature on the participant's ID Folder against the required signature on the WIC check,"* the State Agency's WIC Program will not use this eliminated violation to determine what future administrative action will be taken. A Retailer can request, in writing, a summary of his/her Retailer's program violations and corresponding time period during which these violations will remain active.

B. POLICY

1. Retailer (Vendor) Violations of the WIC Program

- a) Any Retailer, who, in the course of a transaction involving a WIC check, commits any of the sanctionable acts specified in this policy shall be liable for penalty points, CMPs, technical fines, or disqualification. The State Agency's WIC Program must implement reciprocal WIC disqualification as a result of a Food Stamp Program (FSP) disqualification.
- b) A Retailer who commits fraud or abuses the WIC Program is liable for prosecution under applicable Federal, State, or local laws. Those who willfully misapply, steal, or fraudulently obtain WIC funds shall be subject to a fine of not more than \$10,000, or imprisonment for not more than five (5) years, or both, if the value of funds is \$100 or more. If the value of funds is less than \$100, then the penalty shall not be more than \$1,000, imprisonment for not more than one (1) year, or both. A copy of the Federal Regulations **7 C.F.R. §246.12(f)(xiv)** can be obtained by contacting either your assigned Program Representative or the State Agency's WIC Program.
- c) Any sanctions or disqualification of a Retailer from participation in another USDA Food and Consumer Service (FCS) shall result in one to three years, six years or permanent disqualification from the WIC Program depending on the violation noted in Class A – Class D. The State Agency's WIC Program will change the status of High Risk (HR) for any Retailer who has received a FSP CMP in lieu of disqualification.

- d) Notice of a Retailer's disqualification from the WIC Program will be forwarded to the FSP, if a Retailer is found to have committed violations under the **WIC/Food Stamp Program Vendor Disqualification Final Rule**.
- e) The State Agency's WIC Program may assess a fine, CMP and/or disqualify a Retailer based on the State Agency's WIC Program's sanction system for program abuse and failure to adhere to rules, regulations, policies and procedures. The total period of disqualification imposed for State Agency's WIC Program violations investigated, as part of a **single investigation**, may not exceed one (1) year. The State Agency's WIC Program reserves the right to waive a disqualification requirement, if inadequate participant access exist. Sanctions, CMPs and fines are assessed by the State Agency's WIC Program based primarily upon compliance investigations. However, the WIC Division Director, Vendor Manager or Vendor Compliance Coordinator can issue sanctions based on documentation obtained from verifiable sources, i.e., Local Health District complaints, monitoring review results, etc. The Retailer will receive written notification of any point sanctions issued by the State Agency's WIC Program.
- f) If the Retailer fails to comply with any program requirement specified in the **Retailer Contract Agreement**, his/her non-compliance may lead to administrative action being taken including disqualification by the State Agency's WIC Program. This classification system identifies selected violations. Any non-compliance with the Retailer Contract and Agreement observed during compliance buys will be included in the final compliance buy result letter sent to the Retailer.
- g) *The Retailer must maintain an updated Retailer Manual (Teal-colored) on the Retailer's premises.* The Retailer Manual must contain a copy of all contract referenced policies and procedures, including the **Cashier Training Guide**. Failure to comply with this requirement may lead to administrative actions being taken by the State Agency's WIC Program.
- h) If program violations are observed during an on-site monitoring visit, the store monitor will issue "Educational Points". The store monitor will document and advise the Retailer of any non-compliant violations on the Program Review Form used (see **Monitoring Visit Policy 8.0**.) Educational points issued can be used to flag Retailers for compliance investigations.
- i) For WIC Mandatory Federal Sanctions, the CMPs must be calculated using the regulatory formula. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000. CMPs cannot exceed \$10,000 per violation and \$40,000 per investigation. If more than one investigation, a CMP must be imposed for each violation (the formula shall not exceed \$10,000/\$40,000 limits when calculating the CMP). **If a Retailer fails to pay the CMP, the State Agency's WIC Program must disqualify the Retailer for a period equal to the violation for which the CMP was assessed 7 C.F.R. §246.12.(k)(2)(ii)(B)(6).**

2. Inadequate Participant Access

Any FSP disqualification will result in a WIC disqualification, unless the State Agency's WIC Program determines inadequate participant access exists and imposes a CMP in lieu of disqualification. WIC disqualification will be the same length of time as the FSP disqualification. It may, however, begin at a later date than the FSP disqualification. It is not subject to review under the WIC Program. The criteria the State Agency's WIC Program uses to determine inadequate participant access are outlined in the **Inadequate Participant Access Policy Relating to Retail Store Management Policy (#15.2) and Monetary Penalty Guidelines, in lieu of Disqualification Policy (#15.4).**

3. Vendor (Retailer) Conference

Depending on the violations observed, the Retailer may request an informal "Vendor Conference." The Vendor Conference will be held once the compliance investigation is completed and the Retailer has received a final compliance buy notice. At that time, the program violations observed will be reviewed with the Retailer. The Retailer will be provided a copy of the investigative reports. See **Vendor (Retailer) Conference Policy (#15.1)** for further information about this option.

C. PROCEDURE

1. The Retailer sanction classification process incorporates a Class A to Class D system. The State Agency's WIC Program will determine the type and level of sanctions to be applied against Retailers that violate Program standards, depending on the severity, nature and/or recurrence of a violation.

Voluntary withdrawal or non-renewal in lieu of disqualification is not permitted for WIC Mandatory Federal Sanctions. **The State Agency's WIC Program may use voluntary withdrawal or non-renewal for State Agency's WIC Program sanctions only.**

2. The State Agency's WIC Program may assess a civil money penalty (CMP) and/or disqualify a Retailer for failure to adhere to rules, regulations, policies and procedures. **A \$100 technical fine shall be assessed for all documented violations that do not meet the pattern threshold.** Failure to pay a CMP within the stated due date may lead to the Retailer's being disqualified. If a Retailer fails to pay the CMP, the State Agency's WIC Program must disqualify the Retailer for a period equal to the violation for which the CMP was assessed. Class A and Class B Violations have an active life of One Year. A Class C Violation has an active life of Three Years. A Class D Violation has an active life of Six Years or Permanent Disqualification. The effective date on which these violations become active is determined by the date on the final compliance investigation notice.
3. Upon completion of the first buy, a notification letter will be sent certified mail identifying any technical program violations (Class A Technical Program Violations only). No written warning is required to impose a WIC Mandatory Federal Sanction. After the investigation is completed, the Retailer will be notified of all violations and administrative action taken. Every incidence of a violation, including repeat occurrences, will be documented. All documented WIC Mandatory

Federal Sanctions will count toward the establishment of a pattern of non-compliance. The final compliance buy results letter will identify any and all program non-compliance observed, and the expected corrective action to be taken by the Retailer. If the Retailer does not comply with the corrective action noted in this letter, he/she may be subject to further administrative actions.

4. Once the Retailer receives a final compliance buy results letter, he/she can request in writing a copy of the receipt obtained from the individual compliance buys, and information about the case, if applicable. This documentation is available, upon request, only after the compliance investigation has been closed.
5. After the Retailer receives a final compliance buy results letter, he/she must remit any non-compliance fine payments within 30 calendar days to the State Agency's WIC Program. The cashier's check or money order should be mailed to: **Virginia Dept. of Health – WIC Program
Monetary Penalty Payment
1500 East Main Street – Suite 132
Richmond, VA 23219**
6. At the conclusion of the compliance investigation, a letter of notification will be sent by the State Agency's WIC Program to Retailers with either WIC Mandatory Federal or State Agency's sanctions. The effective date of disqualification will be identified in this letter. A copy of the **Retailer's Right of Appeal Policy (1.0)** will be sent with this letter of notification. The State Agency's WIC Program must notify the FSP within fifteen (15) calendar days after a Retailer's opportunity to file an administrative appeal regarding a mandatory sanction has either expired or been exhausted.
7. A Retailer may apply for WIC authorization after he/she has completed the disqualification requirement. There is no automatic reinstatement. The Retailer will have to meet the State Agency's WIC Program's selection and authorization requirement at the time the application is received. The Retailer's application will be reviewed under the same criteria as all other Retailers applying for WIC authorization, which criteria include the history of previous performance. In addition, if selected and authorized, the Retailer will be deemed a High Risk Retailer for its first year (see **Retailer Selection and Authorization Policy 14.0** and **High Risk Retailer Policies 6.0** for more information).
8. The State Agency's WIC Program will send written notification to all Retailers who participated in compliance buy(s) during which no program violations were observed. An acknowledgment letter will be sent after the first compliance buy, as well as at the conclusion of the investigation.
9. **Minimum Food Stocking Requirement and On-Site Monitoring:** If a Retailer fails to maintain the minimum food stocking requirement (*any food category*) during a compliance investigation and/or an on-site monitoring visit and this violation is documented **twice** within a consecutive twelve month period, the State Agency's WIC Program will issue a **Class A (04)** program violation and \$100 penalty fine. A warning letter and penalty fine statement will be sent to the Retailer documenting this performance issue. If this same deficiency is noted a third time, the State Agency's WIC Program will take further administrative action including disqualification against the non-compliant Retailer **Class B (02)**. If a Retailer fails to maintain the minimum food stocking requirement (*two or more: any combination of food categories*) during an on-site

monitoring visit and this outcome is documented **twice** within a consecutive twelve month period, the State Agency's WIC Program will issue a **Class B (04)** program violation which will result in the Retailer being disqualified for one year. If a Retailer has a combination of the above categories, **the one year disqualification period will apply.**

10. If a Retailer accumulates 1-4 technical program violations, s/he can request on-site remedial training, if desired.

If a Retailer accumulates 5-7 technical program violations, attendance at a remedial training session is mandatory. The Retailer must contact the assigned Program Representative within thirty (30) calendar days to make arrangements to attend a mandatory training class. A "Letter of Intent" from the owner/corporate officer outlining a corrective action plan of action with implementation date(s) to correct and prevent future occurrences of violations must be sent to the State Agency's WIC Program within thirty (30) calendar days after mandatory training has been completed. Failure to submit a "Letter of Intent" to correct program compliance performance may lead to the State Agency's WIC Program taking disqualification actions.

11. If a Retailer has previously been assessed a violation for any of the WIC Mandatory Federal Sanctions and a second mandated sanction occurs during subsequent compliance investigation(s), the disqualification period will be doubled (e.g., first occurrence will be a three year disqualification, second occurrence will be a six year disqualification).
12. If a Retailer has previously been assessed a violation for any of the WIC Mandatory Federal Sanctions and a third mandated sanction occurs during a subsequent compliance investigation, the disqualification period will be doubled (e.g., first occurrence will be a three year disqualification, second occurrence will be a six year disqualification, third occurrence will be a twelve year disqualification). A CMP shall not be imposed in lieu of disqualification for the third or subsequent sanctions for WIC Mandatory Federal sanctions.
13. If multiple State Agency's WIC Program and WIC Mandatory Federal sanctions occur during an investigation, the State Agency's WIC Program Sanctions and WIC Mandatory Federal Sanctions must be included in the notice of administrative action (charge letter). The State Agency's WIC Program Sanctions should be imposed in situations where a WIC Mandatory Federal Sanction is not upheld on Administrative Appeal.
14. The State Agency's WIC Program reserves the right to seek civil and criminal prosecution of WIC Retailers for any program abuse including but not limited to all instances of dealing in stolen or lost checks, trading cash and other inappropriate commodities for checks, and/or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, and/or other practices meeting the definition of fraud as defined under the Commonwealth of Virginia Statues.

Class A Technical Program Violations \$100 Fine

Technical Program Violations represent procedural and check handling deficiencies identified from compliance investigative buys. Scope: **\$100 Fine For Up To Seven (7)** Class A Technical Program Violation shall be enforced. Beginning with the second compliance buy result(s), the Retailer is required to pay a penalty fine for each violation observed, including repeat incidents of the same violation. All of these requirements are outlined in the **Retailer Contract Agreement and Application Form, Section B**, entitled *Retailer's Responsibilities*.

State Agency's WIC Program Sanctions

The Retailer:

- (01) Accepts a WIC check before the "1st Date to Spend" or after the "Last Date to Spend" as printed on the check;
- (02) Fails to offer participants the same courtesies offered to other customers (i.e., accepting Retailer or manufacturer's coupons); requiring a participant to wait more than 10 minutes for management approval, review or handling of a WIC check, etc.
- (03) Limits participants in their choices of WIC foods (e.g., allowing only a Retailer brand of cheese or other WIC foods not restricted to the "least expensive" brand); The "least expensive" brand applies only to milk;
- (04) Fails to maintain minimum food stocking requirement in the customer area or immediately available to the customer area (e.g., storage area): deficient stock of contract infant formula or of one WIC approved food (see PROCEDURE section, paragraph #9 for additional information);
- (05) Fails to fill in the WIC check price using an inerasable ink before the participant signs the check;
- (06) Charges the WIC Program sales tax on a WIC purchase. This includes, but is not limited to, the use of coupons by a WIC participant. Retailers must accept coupons from WIC customers to reduce the total of WIC items purchased, if they accept them from other customers;
- (07) Fails to witness the participant's signature after the dollar amount has been entered on the check;
- (08) Fails to give a receipt to participants for all WIC purchases, unless expressly declined by the participant;
- (09) Fails to display prices of authorized foods on the foods, on the shelves in close proximity to the foods, or in the immediate area where the foods are kept;
- (10) Substitutes a brand, **other than that prescribed on the WIC check**, for a WIC approved food, (e.g., Isomil for Similac with Iron, Kellogg's Fruit Loop for Cheerios);
- (11) Charges the WIC Program for a quantity that is greater than the quantity allowable on the WIC check (e.g., charging for 40 ounces of WIC approved cereal when only 36 ounces is allowed).
- (12) Substitutes non-contract formula (e.g., Enfamil for Similac with Iron), **when a contract formula is prescribed on the WIC check.**

Class B Serious Program Violations One Year Disqualification

Serious Program Violations represent deficiencies that can lead to deficient food stock, provision of ineligible foods, including outdated foods, and program integrity shortfalls. Scope: One Year Disqualification for **one incident of a State Agency's WIC Program Class B Serious Program Violation or eight or more Technical Program Violations (Class A) and One Year Disqualification for three documented incidences of a WIC Mandatory Federal Sanction** shall be enforced. All of these requirements are outlined in the **Retailer Contract Agreement and Application Form, Section B**, entitled ***Retailer's Responsibilities***.

State Agency's WIC Program Sanctions

The Retailer:

- (01) Forges a participant's signature onto a WIC check;
- (02) Fails to comply with instructions to correct violations or corrective actions documented in Retailer's Letter of Intent;
- (03) Fails to submit a required price list of WIC authorized foods as demanded by the State Agency's WIC Program;
- (04) Fails to maintain minimum food stocking requirement in the customer area or immediately available to the customer area: deficient stock two or more different food items (see PROCEDURE section, paragraph #9 for additional information);
- (05) Discriminates against WIC participants on the basis of race, color, national origin, age, sex or disability;
- (06) Fails to pay an administrative fee, compliance fine, overcharge or CMP interest as requested by the State Agency's WIC Program;
- (07) Fails to attend mandatory WIC Program training, after having the opportunity to reschedule once;
- (08) Accepts WIC check(s) during a period of disqualification or prior to authorization.

WIC Mandatory Federal Sanctions

- (09) Substitutes non-eligible or unauthorized food (e.g., canned soup for canned tuna fish) **from that which is prescribed on the WIC check**;
- (10) Charges the WIC Program for **more food listed on the WIC check** than the quantity allowed on the WIC check (e.g., allowing the purchase of four (4) gallons of milk when **only** two (2) gallons are prescribed on the WIC check).

Class C Critical Program Violations Three Year Disqualification

Critical Program Violations represent a more serious pattern or type of program non-compliance. Scope: Three Year Disqualification for three incidences of a Class C Critical Program Violation shall be enforced. A Retailer with **three or more critical program violations (unless stated otherwise) during a single investigation**, including repeat incidences of the same violation. All of these requirements are outlined in the **Retailer Contract Agreement and Application Form, Section B**, entitled *Retailer's Responsibilities*.

WIC Mandatory Federal Sanctions

The Retailer:

- (01) Receives, transacts or redeems WIC check(s) outside of authorized channels, including the use of an unauthorized Retailer. (This violation includes situations in which a Retailer, who owns more than one store, not all of which is authorized, accepts WIC check(s) at an unauthorized store and redeems them through an authorized Retailer);
- (02) Substitutes non-food items for WIC foods, e.g. detergents, kitchen items, etc.;
- (03) Provides cash or credit, in whole or in part, for a WIC check;
- (04) Claims reimbursement in excess of documented inventory;
- (05) Writes in the space provided (Actual Dollar Amount of Sale) a total higher than the actual shelf prices (overcharging)* of those items authorized by the WIC check and purchased by the WIC participant;
- (06) Charges WIC Program for supplemental foods not purchased or received by the participant;
- (07) Sells cigarettes, tobacco products or alcoholic beverages for WIC check(s). **Only one documented occurrence is sufficient for imposition of this sanction.**

* If the overcharge amount is equal to or more than the purchase value of the item, then one (1) documented incident will warrant a Three Year Disqualification (e.g., WIC check prescribes two (2) gallons of milk, one (1) gallon is purchased and the State Agency's WIC Program is charged for two (2) gallons).

Class D Major Program Violations Six Year or Permanent Disqualification

Major Program Violations represent deficiencies that directly or indirectly contribute to Program abuse and fraud. Scope: Six Year Disqualification or Permanent Disqualification for one incidence of a Class D Major Program Violation shall be enforced: a Six Year Disqualification for an administrative finding of trafficking or illegal sales imposed by the State Agency's WIC Program and a Permanent Disqualification for a conviction of trafficking or illegal sales imposed by a criminal court. All of these requirements are outlined in the **Retailer Contract Agreement and Application Form, Section B**, entitled *Retailer's Responsibilities*.

WIC Mandatory Federal Sanctions

The Retailer:

- (01) Shall receive a Six Year Disqualification for an administrative finding of trafficking or illegal sales. **One documented occurrence is sufficient for imposition of this sanction.** Administrative finding* refers to a sanction imposed by the State Agency's WIC Program that is not supported by a criminal conviction;
- (02) Shall receive Permanent Disqualification** for a conviction of trafficking or illegal sales. **One documented occurrence is required to impose this sanction.** Conviction refers to an action by a criminal court.

*For these mandated sanctions, "Retailers convicted of trafficking/illegal sales" an administrative finding of "trafficking/illegal sales," and the sale of alcohol or alcoholic beverages or tobacco products, "only one incidence is sufficient to warrant a mandatory sanction.

**"Trafficking/Illegal Sales" is the buying or selling of food instruments for cash; exchanging food instruments for fire arms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). When disqualification is permanent, it shall be effective the date of notice of the administrative action. The Retailer shall not be entitled to receive any compensation for revenues lost as a result of such violation.

References: **7 C.F.R. §246.12(k)(i)**
 7 C.F.R. §246.12(f)(xiv)
 High Risk Retailer Policy
 Inadequate Participant Access Relating to Retail Retailer Management Policy
 Monetary Penalty Guidelines
 Monitoring Visit
 Retailer Contract Agreement and Application Form
 Retailer Selection and Authorization Policy
 Retailer (Vendor) Conference Policy

Note: This policy has been revised and approved by the Virginia Office of the Attorney General and United States Department of Agriculture (USDA).